CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/1002/2009-DB

[Arising out of Order-in-Appeal No. 83/2009 dated 05/08/2009 passed by Commissioner of Central Excise (Appeals-I) Bangalore]

E/1029/2009-DB

[Arising out of Order-in-Original No. 15-17/2009 dated 20.08.2009 passed by Commissioner of Central Excise, Bangalore I Commissionerate, Bangalore]

HYVA INDIA LTD,
SY NO-18, BALAGARANAHALLY, ATTIBELE
INDISTRIAL AREA, HOSUR MAIN ROAD,
BANGALORE-562107

Appellant(s)

Versus

C.C.E.-BANGALORE-I
POST BOX NO 5400...CR BUILDINGS,
BANGALORE,
KARNATAKA
560001

Respondent(s)

Appearance:

Mr. G.Shivdas, Advocate
V. LAKSHMIKUMARAN & V. SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH
FLOOR, SOUTH WING BRIGADE GATEWAY
CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
MALLESWARAM .
BANGALORE
KARNATAKA
560 055

For the Appellant

For the Respondent

Mr. K.Murali, AR

Date of Hearing: 14/08/2018
Date of hearing: 03/09/2018
Date of Decision:06/09/2018

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON’BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21326-21327/2018

Per : P.ANJANI KUMAR

M/s. Hyva India Ltd. (the appellants) are engaged in the activity of body building on duty paid motor vehicle chassis supplied to them by M/s. Tata Motors Ltd. (TML). The appellants are entered into an agreement with TML. The appellants were availing credit of duty paid by M/s. TML and they have also procured raw materials by their own account.

2. The appellants charged a consolidated sales consideration for the body built on the chassis which included the cost of raw materials procured by the appellants; body building costs and the profit margin. They were arriving at the assessable value by adding the price of the body plus cost of chassis in terms of Section 4(1)(b) read with Rule 6 of the Central Excise Valuation Rules, 2000. They are also paying VAT on their own consideration of sales on the value of body building cost plus excise duty.

2.1 Thereafter, the Department issued following SCNs proposing re-determination of assessable value of goods cleared by the appellants in terms of Rule 10A of Central Excise Valuation Rules, 2000 read with Section 4(1)(a) of the Central Excise Act, 1944.

SI. No.	Period/ Dated	Amount
1.	April 2007 to June 2007	Rs.21,01,288/-
2.	July 2007 to December 2007 dated 04.08.2008	Rs.1,06,81,230/-
3.	January 2008 to April 2008 dated 02.02.2009	Rs.1,45,22,130/-
4.	April 2008 to September 2008 dated 02.02.2009	Rs.1,36,28,209/-

2.2 The appellants submitted that Rule 10A was not applicable as the goods are not manufactured on job-works basis; the chassis was sold by M/s. TML for a price and valuation in terms of Section 4(1)(a) read with Rule 6 of the Central Excise Valuation Rules, 2000 is correct and the imposition of penalty was not sustainable.

2.3 The SCN at serial no. 1 was adjudicated by Additional Commissioner vide Order No. 31/2008 dated 30.08.2008 and was upheld by the Commissioner (Appeals) vide Order No. 83/2009 dated 05.08.2009. The SCNs serial no. 2,3,4 were adjudicated by Commissioner vide Orders No. 15-17/2009 dated 20.08.2009. The Appeal No. E/1029/2009 was filed against this order and was hear on 14.08.2018. The Appeal No. E/1002/2009 was filed against the demand at serial no. 1 and was heard on 03.09.2018 as the issue involved in both the cases is same but for different periods. They are taken together for disposal.

3. Learned counsel for the appellants submitted that Section 4(1)(a) of the Central Excise Act, 1944 read with rule 6 of the Central Excise Valuation Rules, 2000 would apply in their case as the issue involved is sale of body built on the chassis supplied by M/s. TML for a price. They relied upon the following cases:

(i) Patnaik & Company Vs. State of Orissa- 1965 (16) STC 364 (SC).

(ii) Mckenzies Ltd. Vs. State of Maharashtra- 1965 (15) STC 518 (SC).

(iii) Commissioner of Commercial Taxes Vs. M.G. Brothers- 1975 (35) STC 24 (SC).

(iv) Pothula Subba Rao Vs. State of A.P.- 1972 (30) STC 36 (AP).

(v) Jiwan Singh & Sons Vs. State of Punjab- 1963 (14) STC 957 (P&H).

(vi) Commissioner of Sales Tax Vs. Haji Abdul Majid & Sons- 1963(4) STC 435.

3.1 He further submitted that the Department has erred in interpreting that they have manufactured body built vehicles on behalf of M/s. TML. Rule 10A would apply if the goods are manufactured by a job-worker 'on behalf' of a principal manufacturer. The expression 'by or on behalf of' has been interpreted by various Judicial fora as follows:

(i) Poona Bottling Co. Ltd. & Anr. Vs. UOI- 1981 (8) ELT 389 (Del.).

(ii) UOI Vs. Poona Bottling Co. Ltd.- 2003(154) ELT A240 (SC).

(iii) Spencer and Co. Ltd. Vs. ACCE- 1983 (14) ELT 2098 (Mad.).

(iv) Steel City Beverages Pvt. Ltd. Vs. UOI- 1986 (23) ELT 147 (Pat.).

(v) Parle Beverages (P) Ltd. Vs. UOI- 1982 (10) ELT 142 (Bom.).

(vi) Goa Bottling Company (P) Ltd. and Others Vs. UOI 1987 (28) ELT 215 (Bom.).

3.2 By the ratio of the above decisions to be follows that manufacture on behalf of would mean that the job-worker is either an employee of the supplier of raw materials or is an agent of the latter. In the instant case, the appellants are not agents of the principal manufacturer therefore the conditions enshrined in Rule 10A are not attracted. The motor vehicle is not manufactured on behalf of principal manufacturer therefore Rule 10A is not applicable. This view is clarified by CBEC Circular No. F.132/111/2007/CX.4 dated 18.07.2007. The Hon'ble Supreme Court of India in the case of Prestige Engineering (India) Ltd. Vs. CCE- 1994 973) ELT 497 (SC) held that when the job-worker contributes his own raw materials to the article supplied by the customers and manufacturer goods it does not amount to job work.

3.3 Interest and penalty are not imposable in view of the following:

(i) Hyva (India) Pvt. Ltd. Vs. Commr. of C.Ex., Belapur 2013 (292) ELT 59 (Tri. Mum.).

(ii) Audi Automobiles Vs. Commr. of C.EX., Indore 2017 (249) ELT 124 (Tri. Del.).

(iii) Audi Automobiles Vs. Commr. of C.Ex., Indore 2017 (346) ELT 498 (Tri.Del.).

(iv) Audi Automobiles Vs. Commr. of C.Ex., Indore 2017 (350) ELT 278 (Tri. Del.)

(v) HMM Coaches Ltd. Vs. Commr. of C. Ex., Panchkula 2016 (339) ELT 152 (Tri. Del.).

3.4 The learned counsel for the appellants has fairly conceded that the Tribunal in their own case ***2013 (292) ELT 59 (Tri. Mum)*** has decided the issue in favour of Revenue. Tribunal held that duty requires to be paid in terms of Rule 10A of Central Excise Valuation (determination of price and excisable goods) Rules, 2000. However, the Tribunal held that since the matter is about interpretation of Rule 10A, penalties imposed are not sustainable. The Hon'ble High Court of Bombay has upheld the order of the Tribunal in their case ***2015 (327) ELT 41 (Bom).*** In view of the same, the learned counsel submitted that penalties may be set aside and matter may be remanded to the Original Authority for proper calculation of the duty giving relevance to taxes paid by them and M/s. TML.

3.5 The learned counsel submitted that whereas the duty confirmed by the Additional Commissioner (in respect of SCN at serial no. 1) and by Commissioner (in respect of SCN at serial no. 2,3,4) was Rs.21,01,288/- and Rs.3,88,31,569 respectively and actual duty payable comes to Rs.14,39,693/-(in respect of serial no.1) and Rs.1,14,98,881/- (in respect of SCN at serial no. 2,3,4). Department have only excluded the element of excise duty from the assessable value for quantification of the demand, in addition to above, the sales tax/VAT paid by M/s. TML and the CST paid by the appellants also required to be deducted. Department has not adopted the cum-duty price in terms of Section 4(1) of the Central Excise Act, 1944. They relied upon their own case ***Hyva (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Belapur 2013 (292) ELT 59 (Tri. Mumbai)*** wherein the Tribunal has accepted that the Department has erred in quantifying the demand in not deducting the sales tax amount from the value.

4. The learned DR has reiterated the findings of OIO and OIA as applicable and submitted that the appellants have not

challenged the calculations before the Original Authority so they cannot be allowed to raise the same at the appellate stage. He has placed reliance on ***Grob Tea Company Ltd. Vs. Collector of C.Ex. Shillong, 1997 (89) ELT 206 (Tri.).***

5. Heard both sides and perused the records of the case. We find that as conceded by the learned counsel for the appellants themselves, the issue is covered by the decision of the Tribunal and Bombay High Court in their own case. However, we find that the learned counsel has made a case for themselves as far as the quantification of duty and setting aside penalties are concerned. We find that the appellants have requested for re-calculation only excluding the duties as taxes and cess paid by them or M/s. TML their principal manufacturer. We find that the request can be accepted. We find that the facts of the case submitted by the learned DR are not same and as such cannot be applied. What was discussed in the ***Grob Tea Company Ltd***. (Supra) case was challenge to the calculations of the Assistant Collector without presenting any data. In the instant case, the appellants have submitted that whereas the Department only excluded the element of excise duty from the assessable value, for quantification of demand, appellants submit that the transaction value of M/s. TML is to be adopted after deducting in addition to the excise duty Sales Tax/VAT paid by M/s. TML and

CST paid by the appellants. Therefore, we find that the point raised by the appellants is valid for arriving at the duty liability. As such, the matter needs to go back to the Original Authority. In view of the ratio of the cases cited above, penalties, however, need to be set aside.

6. In view of the above, we allow the appeals by way of remand with a direction to the Original Authority to quantify the duty considering the reasonable & applicable deductions on account of Excise Duty/VAT/CST etc. paid by M/s. TML and by the appellants. Penalties are, however, set aside.

(Order was pronounced
in Open Court on **06/09/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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